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2-059A004

February 26, 1992

Office of the Secretary  
Interstate Commerce Commission  
Washington, D.C. 20423

17719  
FEB 28 1992 2 00 PM  
INTERSTATE COMMERCE COMMISSION

RE: Lease of Locomotive Equipment  
National Railway Equipment Company, Lessor  
A. E. Staley, Lessee

Dear Mr. Secretary:

I have enclosed an original and one copy of the document described below to be recorded pursuant to Section 11303 of Title 49 of the U.S. Code.

This document is a lease and maintenance agreement of locomotive equipment and is a primary document dated February 21, 1992. The names and addresses of the parties to the documents are as follows:

Lessor

National Railway Equipment Company  
An Illinois Corporation  
14400 S. Robey Street  
P.O. Box 2270  
Dixmoor, IL 60426

Lessee

A. E. Staley Manufacturing Company  
2200 E. Eldorado Street  
Decatur, Illinois 62526

FEB 28 1 54 PM '92  
MOTOR OPERATING UNIT

A description of the equipment covered by the document follows:

<u>Road No.</u>	<u>Type</u>	<u>General Description</u>
640	EMD SW1200	Locomotive

Office of the Secretary  
February 26, 1992  
Page 2

A fee of \$16.00 is enclosed. Please return the original and any extra copies not needed by the commission for recordation to Richard F. Loritz, 9533 W. 143rd Street, Orland Park, IL 60462.

A short summary of the document to appear in the index follows:

A lease and maintenance agreement of locomotive equipment identified as one (1) locomotive, type EMD SW1200, Road Number 640, with National Railway Equipment Co., as Lessor, and A. E. Staley Manufacturing Company, as Lessee.

Also attached is an Affidavit executed by the attorney in fact for National Railway Equipment Co. and appropriately notarized declaring that the enclosed is the original document.

Very truly yours,

NATIONAL RAILWAY EQUIPMENT CO.  
an Illinois Corporation

BY: Richard F. Loritz  
RICHARD F. LORITZ

ITS: Attorney and Agent in Fact

RFL/sjg

Enclosures

# Interstate Commerce Commission

Washington, D.C. 20423

2/28/92

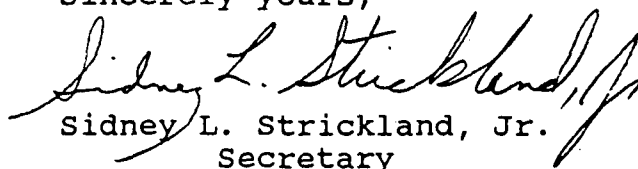
OFFICE OF THE SECRETARY

1 Richard F. Loritz  
Orland State Bank Building  
9533 West 143rd Street  
Orland Park, Illinois 60462

Dear Sirs:

The enclosed document(s) was recorded pursuant to the provisions of Section 11303 of the Interstate Commerce Act, 49 U.S.C. 11303, on 2/28/92 at 2:00PM , and assigned recordation number(s). 17719

Sincerely yours,

  
Sidney L. Strickland, Jr.  
Secretary

FEB 28 1992 2 00 PM

A. WARRANTY AND MAINTENANCE OBLIGATIONS INTERSTATE COMMERCE COMMISSION

1. Warranty. National Railway warrants all parts and components described in Exhibit A for a period of five (5) years while under our maintenance supervision.

2. Maintenance. National Railway agrees to maintain the locomotives described in Exhibit A in satisfactory operating condition so as to meet all Federal Railroad Administration requirements. National shall provide one qualified employee(s) with a vehicle to perform the routine maintenance every sixty (60) days. National shall also provide labor and material for any repairs that require more than two (2) hours of work. National shall be responsible for all repairs such as engine failure, main generator failure, etc. for the term of the lease with the exception of the routine servicing, consumable items and any physical damage caused to the locomotives out of negligent operation of the locomotives by A. E. Staley. A.E. Staley shall provide routine service for the locomotives and consumables such as fuel, lubricants, sand, filters, brake shoes, fuses, light bulbs and carbon brushes. The unit to be maintained at facilities provided by A. E. Staley at no cost to National Railway. National shall supply all tooling to perform necessary inspections and repairs. A. E. Staley to provide water, electricity, air, access to telephone service and a suitable storage area for maintenance repair parts.

3. Environmental Impact. National shall not be liable for any environmental impact problems that may arise under any present regulations or any future regulations that may be issued by any City, State or Federal authority.

4. Rate. A. E. Staley shall pay National for the locomotive as described in Exhibit A at the rate of twenty five hundred and NO/100 (\$2,500.00) per month. This rate includes all maintenance as outlined Section 2.

5. Termination. This lease/maintenance agreement may be terminated by A. E. Staley or National at annual intervals upon ninety (90) days notice in writing to National Railway Equipment Co. at P. O. Box 2270, Dixmoor, Illinois 60426, or to A. E. Staley at 2200 E. Eldorado Street, Decatur, Illinois 62526, or such other addresses as may be designated from time to time in writing. At the time of termination, National shall offer all remaining repair components remaining on A. E. Staley property to A. E. Staley at a negotiated price. A. E. Staley shall be subject to the following penalties if A. E. Staley causes early termination of this lease/maintenance agreement. These penalties shall be paid to National prior to the expiration date of the lease/maintenance agreement. All additions, alterations or modifications made to the locomotive shall become the property of National at time of termination.

AFTER THE FIRST YEAR:	\$8,000.00
AFTER THE SECOND YEAR:	\$6,000.00
AFTER THE THIRD YEAR:	\$4,000.00
AFTER THE FOURTH YEAR:	\$2,000.00

#### B. LEASE OF LOCOMOTIVE EQUIPMENT

1. Base Terms. National agrees to supply on a lease basis one (1) locomotive as described in Exhibit A. A. E. Staley agrees to pay National twenty five hundred and NO/100 dollars (\$2,500.00) per month per locomotive as lease rental which includes all maintenance charges as outlined in Section 2 of this agreement for the term of five (5) years.

2. Lease Renewal. National shall offer A. E. Staley the option to renew the locomotive lease/maintenance agreement for an additional two five (5) year terms. The locomotive and maintenance monthly rates shall be negotiated at time of renewal.

3. Default. Upon default by A. E. Staley in the payment of any amount under the terms of this rental agreement, whether as rental or otherwise, or upon the violation of A. E. Staley of any of the terms and conditions hereof or if A. E. Staley shall vacate, desert or abandon the locomotive or permit same to remain vacated, deserted or abandoned for a period of twenty (20) days and the failure to remedy such default with thirty (30) days after notice of such default to A. E. Staley, then National at its

option by written notice to A. E. Staley declare this rental agreement to be terminated and all rights of A. E. Staley in and to said locomotives to be at an end, and National shall become entitled to the immediate possession of the locomotives. The declaration of default and the repossession of the locomotives by National shall not excuse A. E. Staley from the liability to National for any rental earned prior to the termination of said rental agreement, or for any other expenses incurred by A. E. Staley prior to the termination of said rental agreement. A. E. Staley shall further be liable for and shall pay all expenses incurred by National in taking said locomotives into its possession upon such or any default under the terms of this rental agreement.

4. Uses. The locomotives are to be used by A. E. Staley for commercial railway hauling purposes; and A. E. Staley shall comply with all rules of the Association of American Railroads, the Interstate Commerce Commission and the Federal Railroad Administration, or any successors thereto, with respect to the use, maintenance and operations of the locomotive while in the possession of A. E. Staley.

5. Fees And Taxes. A. E. Staley shall be liable for and pay and satisfy every lawful claim and liability for fees and taxes arising against the use or operation of said locomotives during the term of this rental agreement and, as additional rental, assumes hereunder all license fees, taxes, charges and penalties

imposed by the state of operation or any other state, governmental, or municipal subdivision in which said locomotive may be situated, or may be operated, during the term of this rental agreement.

A. E. Staley in good faith contest the lawfulness of the imposition of all such license fees, taxes, charges, and penalties and National shall cooperate with A. E. Staley in such contest.

6. Ownership. National covenants and warrants its ownership of said locomotives and guarantees peaceful possession of the locomotive to A. E. Staley at all times during the term of this agreement.

7. Insurance. A. E. Staley will provide and maintain for the said locomotives while under lease, insurance to cover both National and A. E. Staley against claims of third person as follows:

- a. Public liability and property damage coverage protecting National and A. E. Staley with respect to their liability for injuries and/or death to third person and damage, destruction or loss of use of property of third persons, as provided in the insurance policy or policies.
- b. Said liability coverage shall provide for an aggregate limit of not less than Five Million dollars (\$5,000,000.00), to the extent as commercially available, for all damages arising

out of the bodily injuries to or death of persons and for all damages to or destruction of property within one year, and with maximum self insured retention of two hundred fifty thousand and NO/100 dollars (\$250,000.00) to the extent commercially available.

- c. National shall not be required to provide any insurance coverage in connection with said leased locomotives.
- d. A. E. Staley further agrees to provide and maintain physical damage insurance coverage for loss and damage to said locomotive due to fire, theft, windstorm, flood or other risks and hazards covered by the standard type of policy regularly issued therefore with a maximum self insured deductible of two hundred fifty thousand and NO/100 dollars (\$250,000.00), to the extent commercially available. National shall be named an additional insured in the above physical damage policy.
- e. In the event A. E. Staley fails to procure or maintain the above insurance, National may procure or maintain the insurance. The resultant cost shall be payable to National as part of the next rental payment, and A. E. Staley's failure to pay this cost

shall have the same effect as the failure to pay rent.

- f. A. E. Staley shall provide National with a certificate of such insurance from the insurer which shall provide that insurer will notify A. E. Staley in writing at least thirty (30) days prior to cancellation or refusal to renew any policy.
- g. A. E. Staley shall indemnify National against any loss, liability, damage or expense which it may incur by reason of any claim made by third parties growing out of the operation of said locomotives, except for any loss, liability damage or expense caused or resulting from any failure of National to perform its obligations hereunder.

National shall provide and maintain insurance to cover both the National and A. E. Staley against claims of third persons as follows:

- a. Claims arising under Workers' or Workmen' Compensation Acts with respect to employees of National performing maintenance service as outlined in this agreement.
- b. Public liability and property damage coverage protecting National and A. E. Staley with respect to their liability for injuries and/or

death to third persons and damages, destruction or loss of use of property of third persons as a result of the ownership or use of motor vehicles in connection with National performing maintenance services as outlined in the agreement.

- c. Said liability coverage shall provide for a limit of not less than \$1,000,000.00 for all damages arising out of each occurrence.
- d. National shall provide A. E. Staley with a certificate of such insurance from the insurer which shall provide that insurer will notify A. E. Staley in writing at least thirty (30) days prior to cancellation or refusal to renew any policy.
- e. National shall indemnify A. E. Staley against any loss, liability or damage expense which it may incur by reason of any claim made by third parties growing out of the operation of said motor vehicle used in connection with National performing maintenance services as outlined in this agreement.

7. Non-Assignment. A. E. Staley agrees that it will not assign, transfer, sublet or lease its rights under this lease, without prior written consent of National which consent shall not be unreasonable withheld, and will not pledge, mortgage or otherwise encumber or permit to

exist upon or be subjected to any lien or charge, any right or interest of A. E. Staley hereunder. A. E. Staley agrees to keep appropriate signs and/or plaques on the locomotives to clearly show that the locomotives are not the property of A. E. Staley and are owned by others.

8. Condition At Delivery. The locomotive subject to this lease shall be qualified prior to delivery and shall be in compliance with the Federal Railroad Administration requirements.

9. Warranty And Maintenance. National's warranty and maintenance obligation with respect to the locomotives shall be as set forth under Part A herein, (Warranty And Maintenance Obligations).

10. Damage To Locomotives. A. E. Staley shall pay for all damages caused by failure of A. E. Staley to maintain an adequate level of crankcase oil in the air compressor or diesel engine of the locomotives or other neglect of A. E. Staley or A. E. Staley employees or other persons using said locomotives while the locomotives are in A. E. Staley's possession, regardless of whether the damage is discovered while the locomotives are in the possession of A. E. Staley or upon inspection when the locomotive is returned to National. A. E. Staley further understands that National assumes no liability for injuries sustained by any person or employee of A. E. Staley from the use of the locomotives except for injuries to National's

employees resulting from the performance of National's obligations hereunder. National does not assume any liability for failure to keep the locomotive in proper condition or repair except as provided in Section 9 of this part.

11. Return Of Locomotives. If A. E. Staley does not exercise its option to renew the rental agreement in Section 2 of this part, A. E. Staley shall return said locomotive to National at the end of the lease term in a condition as good as that in which it was received, normal wear and tear excepted and further excepting any condition resulting from the failure of National to maintain said locomotives in accordance with Section 9 hereof or a breach of the warranty in Section 9.

Failure of A. E. Staley to return the locomotives to National at Silvis, Illinois at the expiration of the lease term shall be construed as an extension of the lease from month to month under the same terms and conditions hereof, at National's sole option.

#### C. GENERAL PROVISIONS

1. Payments. All payments or notices hereunder to be sent pursuant to this agreement shall be in writing and shall be addressed, if to National to NATIONAL RAILWAY EQUIPMENT CO., at 14400 S. Robey Street, P.O. Box 2270, Dixmoor, Illinois 60426, and if to A. E. Staley, at 2200 E. Eldorado Street, Decatur, Illinois 62526 or such other address as may be designated

from time to time by either party in writing. All payments in arrearage shall bear eighteen percent (18%) per annum interest until date paid.

All payments are due in advance monthly installments with the first months rent and one months security deposit due at time of execution of lease agreement. All payments are due on the first day of each month.

EXHIBIT "A"

LOCOMOTIVE TYPE

ROAD NUMBER

EMD SW1200

640

IN WITNESS WHEREOF, the parties have signed this agreement.

NATIONAL RAILWAY EQUIPMENT CO.  
an Illinois Corporation by:

J. J. Beal  
~~One Of Its Officers~~

SEAL

A. E. STALEY MANUFACTURING COMPANY  
a Delaware Corporation by:

Shewie A. Catta PPM.  
~~One Of Its Officers~~

SEAL

Authorized Representative, Plant Purchasing Manager

Dated and effective February 21, 1992.